IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 680 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RANCHHOD MOHAN

Appearance:

MR KC SHAH, APP for Appellant

MR KG SHETH for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 09/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973 is directed against judgment dated February 19, 1986 rendered by the learned Sessions Judge, Amreli in Sessions Case No. 29 of 1985 by which the respondent is acquitted of the offences punishable under Sections 302 and 447 of the I.P.C.

2. Jinabhai Jadavbhai, who is complainant in this case, is residing with his family at village Garni, Taluka Babra, District Amreli and maintains himself by cultivating his agricultural land. He has three sons. Name of the eldest is Babu whereas name of the son who was younger to Babu was Dhiru and the youngest is named Ramesh. Dhiru and Ramesh were residing with the complainant. The incident in question took place in the morning of May 15, 1985. Deceased Dhiru went to the plain at the extremity of the village to collect yellow-clay in his cart. After collecting yellow-clay in the cart, he was returning home at about 7.30 a.m. His sister Shardaben sighted the cart approaching the house and, therefore, opened the gate of the house (delu). It is the case of the prosecution that at that time, the respondent came from behind and delivered two blows on the head of Dhiru, as a result of which, Dhiru sustained injuries on his head. It may be stated that complainant Jinabhai Jadavbhai was sitting at the outskirts of the village as his another daughter named Kanta was to come by bus. On shouts being raised by Shardaben, her sister Samjuben and her mother Galalben came out of the house. A neighbour named Becharbhai also came to the place of the incident and informed Jinabhai Jadavbhai about the same who was waiting at the outskirts of the village for the bus to arrive. Thereupon, Jinabhai Jadavbhai came back to his house and found that the deceased was bleeding from head and ears. As Dhiru had sustained serious injuries, he was removed to Government hospital, Babra in a matador for treatment. The Medical Officer on duty, found that serious injuries were sustained by Dhiru and, therefore, he was referred to Civil Hospital, Rajkot for further and better treatment. The Medical Officer, on duty at Government hospital, Babra, also informed the police that Dhiru was admitted to the hospital with injuries for treatment. At Rajkot hospital, the complaint of complainant Jinabhai Jadavbhai was recorded by the police constable who was on duty at the hospital and necessary papers were sent to Babra police station through Pradyuman Nagar Police Station. The First Information Report lodged by Jinabhai Jadavbhai was handed over to PSI Mr. Jadeja for investigation on May

15, 1985. However, before the FIR lodged by Jinabhai was handed over to Mr. Jadeja, he had received yadi from Medical Officer of Government Hospital, Babra and, therefore, he had gone to Government hospital, Babra where he was informed that the injured was referred to Rajkot. Mr. Jadeja had also informed DSP, Amreli to make arrangement for recording dying declaration of injured Dhirubhai. Mr. Jadeja had drawn panchnama of place of incident and recorded statements of Shardaben Jinabhai, Galalben, Samjuben Jinabhai, Karmashibhai Jinabhai, Kanji Rana etc. who were found to be conversant with the facts of the case. The respondent was not available and therefore, search about him, in the nearby villages, was also made. The respondent had surrendered to the police on May 16, 1985 and, therefore, panchnama of his person was prepared while arresting him in the presence of panch witnesses. During the course of treatment, the deceased succumbed to his injuries on May 18, 1985 and, therefore, offence punishable under Section 302 was added in the FIR. On death of injured Dhirubhai, further statements of witnesses were recorded. The clothes put on by the deceased, which were produced by Head Constable Somabhai, were seized. The incriminating articles seized during the course of investigation were sent to Forensic Science Laboratory for analysis. On completion of investigation, the respondent was chargesheeted in the court of learned Judicial Magistrate, Babra for alleged commission of offences punishable under Section 302 of the I.P.C.

3. As offence punishable under Section 302 of I.P.C. is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Amreli for trial where it was numbered as Sessions Case No.29 of 1985. Necessary charge against the respondent was framed at Exh.1 which was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined (1) Dr. Nuruddin Rajabali Vindhani as p.w.1 at Exh.6, (2) Dr. Nalinchandra Trambaklal Pandya as p.w.2 at Exh.9, (3) Laljibhai Jivabhai Parmar as p.w.3 at Exh.11, (4) Jinabhai Jadavbhai as p.w.4 at Exh.14, (5) Shardaben Jinabhai as p.w.5 at Exh.16, (6) Samjuben Jinabhai as p.w.6 at Exh.17, (7) Becharbhai Vashrambhai as p.w.7 at Exh.18, (8) Gordhanbhai Muljibhai as p.w.8 at Exh.19, (9) Dhirubhai Rambhai as p.w.9 at Exh.20, (10) Ismailbhai Dadanbhai as p.w.10 at Exh.32, (11) Ashokkumar Keshavlal as p.w.11 at Exh.33, (12) Govindbhai Motibhai as p.w.12 at Exh.35, (13) Abdulrahim Mahmad Saiyed as p.w.13 at Exh.37, (14) Batuksinh Fatesinh Jadeja as p.w.14 at Exh.38, (15) Vashrambhai Palabhai as p.w.15 at Exh.39 and

(16) Somabhai Naranbhai as p.w.16 at Exh.40 to prove its case against the respondent.

4. The prosecution also produced documentary evidence such as certificate of injury of the deceased issued by Dr. Vindhani at Exh.7, post-mortem notes of the deceased at Exh.10, map of place of incident at Exh.13, application by Jinabhai to the Panchayat to remove garbage at Exh.15, notice issued by Panchayat to the respondent calling upon him to remove garbage at Exh.21, inquest report at Exh.24, panchnama of place of occurrence at Exh.25, panchnama regarding seizure of clothes of the deceased at Exh.27, result of analysis at Exh.31, panchnama of person of the respondent at Exh.34, complaint of Jinabhai at Exh.36 etc. in support of its case against the respondent.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the respondent, the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement, as required by Section 313 of Code of Criminal Procedure. In his further statement, the case of the respondent was that he was falsely implicated in the case and had not committed the offence, as alleged by the prosecution. However, no evidence was adduced by the respondent to substantiate the defence raised by him in his further statement.

6. On appreciation of evidence, the learned Judge held that according to the prosecution, Shardaben Jinabhai was the only person who had witnessed the incident and as her testimony was unreliable, the respondent was entitled to be acquitted. In view of the said finding, the learned Judge has acquitted the respondent by judgment dated February 19, 1986, giving rise to the instant appeal.

7. This court has heard Mr. K.C. Shah, learned APP for the State and Mr. K.G. Sheth, learned advocate of the respondent at length and in great detail. This court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

8. The prosecution case is that the respondent had assaulted the deceased because complainant Jinabhai had made an application to the Panchayat to remove dung-hill of the respondent. In support of this case, the prosecution had produced the application made by witness

Jinabhai to the Panchayat at Exh.15. However, a bare perusal of the said application makes it evident that it was not made against the respondent at all. Further, the complaint if at all had been made by witness Jinabhai, and not by the deceased and therefore, there was no earthly reason for the respondent to assault the deceased who had not taken or initiated action against him at all. The prosecution has produced notice issued to the respondent by the Panchayat calling upon him to remove the garbage. However, in the said notice, it is claimed that garbage was dumped by the respondent on the land belonging to the Panchayat. Thus, on appreciation of evidence, the learned Judge has rightly held that the prosecution has failed to prove the motive which prompted the respondent to assault the deceased.

9. Normally, absence of evidence regarding motive loses its importance as an instance in favour of the accused, if direct evidence of eye-witness, which is trustworthy, is available. However, when the prosecution approaches the court with a specific case and fails to prove the same, it is a relevant consideration and cannot be ignored by the court. The learned Judge of the Trial Court has rightly held that complainant Jinabhai Jadavbhai is not an eye-witness to the incident. The testimony of this witness would show that he had gone to the outskirts of the village to pick up his daughter Kanta who was to come by bus. The testimony of his daughter Samjuben Jinabhai, recorded at Exh.17, would show that Kantaben was present at the time when the incident had taken place. Therefore, the prosecution story that Jinabhai had gone to the outskirts of the village to pick up his daughter becomes highly doubtful. This discrepancy is not explained by any of the witnesses. Shardaben, who claims to be an eye-witness and who, according to the prosecution, was the only eye-witness, has stated in her testimony that on sighting that the cart was approaching the house, she had opened the main gate of the house to enable the cart to come in and that the respondent had assaulted the deceased saying that his dung-hill was damaged by driving cart on the dung-hill. However, the panchnama of place of occurrence does not show any marks of wheels of cart on the dung-hill at all. The panchnama also does not show that yellow clay was collected in the cart. Therefore, the prime theme of the prosecution case that the deceased had gone to the plain on the extremity of the village to collect yellow-clay and was returning home itself becomes highly doubtful. Further, the panchnama does not indicate that blood was found at the place of the incident. Witness Shardaben, in her testimony, has

stated that at the time of the incident, her sister and mother were working inside the house and therefore, Shardaben also must have been doing some household work inside the house but her presence at the time and place of incident is mentioned only with a view to projecting her as an eye-witness. It is relevant to notice that in the complaint lodged by Jinabhai, who is father of the deceased, it is not mentioned that Shardaben had witnessed the incident. Further, the claim advanced by Shardaben that two blows with iron pipe were delivered from the back by the respondent on the head of the deceased does not get support from the medical evidence on record. The medical evidence on record would indicate that the deceased had sustained one injury on his head. The claim made by complainant Jinabhai was that he was at the outskirts of the village and was waiting there for the bus to arrive in which his daughter was to come and that at that time, he was informed by Becharbhai about the assault on the deceased by the respondent. However, this claim is found to be highly doubtful as this fact is not mentioned in the complaint at all. Though Samjuben is examined at Exh.17, she has not stated that the main gate of the house was opened by Shardaben to enable the cart to come in the house. Further, the fact that on sighting the cart approaching the house, she had opened the main gate of the house is not mentioned by Shardaben in her police statement and this material contradiction stands duly proved through the testimony of Investigating Officer. It was the case of Shardaben that on shouts being raised, her mother had also come out of her house but the prosecution has not examined Galalben, for reasons best known to it. The presence of Kantaben at the time and place of incident, as referred to by her sister Samjuben, is baffling and raises serious doubt about the prosecution case. The learned Judge has delivered judgment running into 40 pages and recorded cogent reasons for acquitting the respondent. Those reasons cannot be termed as arbitrary or perverse or unreasonable so as to enable this court to interfere with the same.

10. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had opportunity to observe demeanour of the witnesses. As the Court is in general agreement with the view expressed by the learned Judge, the Court does not think it

necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in view of this Court, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. vs. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka vs. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Judge and, therefore, the appeal is liable to be dismissed.

11. For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the judgment which is impugned in the appeal. The bond, if any, executed by the respondent or his surety shall stand cancelled.

(J.M. Panchal, J.)

(M.C. Patel, J.)

hki